

REMARKS

Claims 1-30 and 36-48 are currently pending in the application; however, claims 24, 26-30 and 42-46 remain withdrawn.

35 U.S.C. §103(a) Rejection of Claims 1-23, 25, 36-41, 47 and 48

The Examiner has rejected claims 1-23, 25, 36-41, 47 and 48 under 35 U.S.C. §103(a) in view of U.S. Pat. App. Pub. No. 2003/0208246 to *Kotlik, et al* (“*Kotlik*”) and further in view of U.S. Pat. No. 6,839,594 to *Cohen, et al.* (“*Cohen*”). Applicants respectfully disagree, at least for the reasons set forth below.

The Examiner has failed to establish a *prima facie* case for obviousness in that, even in combination, the two references cited do not teach each and every limitation of the claims. For example, the Examiner indicated that *Kotlik* does not teach or suggest using measurements from a healthy body part of the same type as the paretic body part being rehabilitated, which is true. In order to provide this limitation to claim 1, *Cohen* has been added to *Kotlik*; however, *Cohen* doesn’t describe using measurements from a healthy body part either. Instead, *Cohen* describes implanting measuring and stimulating micro-electrodes near the nervous system of a paretic body part only. Both sections of *Cohen* which the Examiner references in the Office Action describe using measurements from the paretic limb of the patient, not a healthy limb, see for example Col . 5, lines 7-15 (which describes an artificial neural network for controlling and stimulating “the limb”, however if the description was referring to a healthy body part no controlling or stimulating would be needed or even desirable) and Col. 15, lines 22-24 (which explicitly states that measurements are made from the “dysfunctional” limb).

In addition to the failure to provide a combination which teaches each and every limitation of the rejected claims, *Kotlik* actually teaches away from combining it with another reference which derives measurements from a healthy body part of the same type. For example, paragraph [0010] of *Kotlik* explains that a feature of the invention is that the same pair of electrodes is used for both measuring and stimulating, which means that the measuring cannot and is not desirable to be done from a healthy body part. The last sentence of this paragraph states explicitly that “by using the same pair of electrodes, the muscle that transmits the EMG impulse is the same muscle that is stimulated.” In contrast, the claims of the present invention teach measuring from a different body part than the stimulating.

Not only does *Kotlik* teach away from measuring from a healthy body part, *Cohen* teaches away from using NMES applied to the muscle of a paretic body part. It is explicitly stated in the Background section of *Cohen*, Col. 1, lines 39-49, that application of stimulating current through an electrode to the muscle is undesirable. In contrast, claim 1 of the present application teaches applying stimulation to a muscle of the patient.

For at least these reasons, claims 1-23, 25, 36-41, 47 and 48 are patentable in view of *Kotlik* and *Cohen*.

General Remarks

Applicants note that the claims currently pending have already been searched by the European Patent Office and were indicated in the International Preliminary Report on Patentability as meeting the criteria of PCT Articles 33(2) - 33(4). In view of the favorable IPRP and the argument contained herein, Applicants submit that the application is in order for allowance. A notice to this effect is respectfully requested.

In the event that the Examiner believes that there are problems which would make it impossible to issue an allowance for all the claims, the Examiner is respectfully requested to call the undersigned.

Respectfully submitted,

/Jason H. Rosenblum/

Jason H. Rosenblum
Registration No. 56437
Telephone: 718.246.8482

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